

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2140  
By: Lucio et al.  
Agriculture, Water & Rural Affairs  
4/24/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Economically Distressed Area Program (EDAP) was established by the 71st Legislature in 1989 to provide financial assistance in the form of grants and loans for water and wastewater service to economically distressed areas where services do not exist or systems do not meet minimum state standards. The Texas Water Development Board (TWDB), as the administrator of EDAP, sells bonds and uses the proceeds to fund the program, which includes measures to prevent future substandard developments.

S.B. 2140 amends current law to add drainage projects as eligible for financial assistance under EDAP, in addition to water supply and sewer projects, which are currently authorized.

Currently, financial assistance through EDAP is constitutionally limited to providing wholesale and retail water and wastewater facilities to economically distressed areas. S.J.R. 61 would allow TWDB to also provide financial assistance for drainage projects, which could help to address mosquito-borne pathogens such as Zika virus and to ensure road access during storm events.

S.B. 2140 also directs TWDB to use additional bonds in conjunction with other sources of financial assistance and to promote and support financially viable public-private partnerships. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 2140 amends current law relating to the provision by the Texas Water Development Board of financial assistance for the development of certain projects in economically distressed areas.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Water Development Board is modified in SECTION 10 (Section 17.936, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter K, Chapter 17, Water Code, to read as follows:

**SUBCHAPTER K. ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY, SEWER SERVICE, AND RESIDENTIAL DRAINAGE PROJECTS**

SECTION 2. Amends Sections 17.921(1) and (2), Water Code, to redefine "economically distressed area" and "financial assistance."

SECTION 3. Amends Section 17.922, Water Code, as follows:

Sec. 17.922. FINANCIAL ASSISTANCE. (a) Authorizes the economically distressed areas account to be used by the Texas Water Development Board (TWDB) to provide financial assistance to political subdivisions for the construction, acquisition, or

improvement of water supply, sewer, and residential drainage services, including providing certain funds. Makes a nonsubstantive change.

(b) Requires TWDB, to the extent practicable, to use the funds in the economically distressed areas account in conjunction with the other financial assistance available through TWDB to encourage the use of cost-effective water supply, wastewater, and residential drainage systems, including regional systems, to maximize the long-term economic development of counties eligible for financial assistance under the economically distressed areas program. Requires that financial assistance provided from the economically distressed areas account in no event be used to provide water supply, wastewater, or residential drainage service to any area that is not an economically distressed area. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.9226, as follows:

Sec. 17.9226. USE OF CERTAIN GENERAL OBLIGATION BONDS. Requires TWDB to:

(1) work to maximize the effectiveness of the additional general obligation (GO) bonds authorized by Section 49-d-10(a-1) (relating to authorizing TWDB to issue certain additional GO bonds), Article III (Legislative Department), Texas Constitution, by using the additional bonds in conjunction with other sources of financial assistance, including nonpublic funds, to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply, sewer, and drainage services; and

(2) use the additional GO bonds authorized by Section 49-d-10(a-1), Article III, Texas Constitution, to promote and support public-private partnerships that TWDB determines are financially viable, will diversify the methods of financing available for water supply, sewer, and residential drainage services, and will reduce reliance on the issuance of bonds supported with general revenue.

SECTION 5. Amends Sections 17.927(a) and (b), Water Code, as follows:

(a) Authorizes a political subdivision to apply to TWDB for financial assistance under this subchapter by submitting an application together with a plan for providing water supply, sewer, or residential drainage services to an economically distressed area for which the financial assistance is to be used. Makes a nonsubstantive change.

(b) Requires the application and plan to include certain criteria. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.9275, as follows:

Sec. 17.9275. PRIORITIZATION OF PROJECTS BY BOARD. (a) Requires TWDB to prioritize projects for the purpose of providing financial assistance under this subchapter.

(b) Requires TWDB to establish a system for prioritizing projects for which financial assistance is sought from TWDB. Requires the system to include a standard for TWDB to apply in determining whether a project qualifies for financial assistance at the time the application for financial assistance is filed with TWDB.

(c) Requires TWDB to give the highest consideration to projects that will have a substantial effect, including projects that will serve an area for which the Department of State Health Services (DSHS) has issued a finding that a nuisance

dangerous to the public health and safety exists resulting from water supply and sanitation problems.

(d) Requires TWDB, in addition to the criteria provided by Subsection (c), to also consider certain criteria in prioritizing projects.

SECTION 7. Amends Section 17.928(c), Water Code, as follows:

(c) Prohibits TWDB, if an applicant includes a proposal for treatment or residential drainage works, from delivering funds for the treatment or residential drainage works until the applicant has received a permit for construction and operation of the treatment or residential drainage works and approval of the plans and specifications from the Texas Natural Resource Conservation Commission (TNRCC) or other applicable permitting authority or unless such a permit is not required by TNRCC or other applicable permitting authority.

SECTION 8. Amends Section 17.929(a), Water Code, as follows:

(a) Requires TWDB, in passing on an application for financial assistance, to consider the need of the economically distressed area to be served by the water supply, sewer, or residential drainage services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications, and the financing of the proposed water supply, sewer, or residential drainage project, including consideration of certain financial information, and the feasibility of achieving cost savings by providing a regional facility for water supply, wastewater, or residential drainage services. Makes nonsubstantive changes.

SECTION 9. Amends Sections 17.933(b) and (d), Water Code, as follows:

(b) Changes references to the Texas Department of Health Services to DSHS.

(d) Requires TWDB in determining the amount and form of financial assistance and the amount and form of repayment, if any, to consider the just, fair, and reasonable charges for water, wastewater, and drainage service as provided in this code. Deletes existing text requiring TWDB to consider rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services.

SECTION 10. Amends Section 17.936(d), Water Code, to authorize the provider of water or wastewater utility or residential drainage service to an economically distressed area, to recover from a developer or owner of an undeveloped lot economically distressed areas program impact fees as provided by rules adopted by TWDB.

SECTION 11. Amends Subchapter K, Chapter 17, Water Code, by adding Section 17.937, as follows:

Sec. 17.937. REPORTING AND TRANSPARENCY REQUIREMENTS. (a) Requires TWDB to annually post on TWDB's Internet website a report detailing each project for which TWDB has provided financial assistance under this subchapter.

(b) Requires the report to include a description of each project, the location of each project, the number of residents served by each project, the amount of financial assistance provided or anticipated to be provided for each project, and a statement of whether each project has been completed and, if not, the expected completion date.

SECTION 12. Repealer: Section 17.933(b-1) (relating to TWDB providing financial assistance in the form of a loan to a conservation and reclamation district), Water Code.

SECTION 13. Effective date: the date on which the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, providing for the issuance of additional GO bonds by TWDB to provide financial assistance for the development of certain projects in economically distressed areas takes effect.